IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6893 OF 2006

Rizvi Land Developments Pvt.Ltd. ...Petitioner

vs.

The Divisional Joint Registrars and ors. ...Respondents

Mr.G.S.Godbole i/b Mr.R.R.Kalekar for the Petitioner
Mr.P.I.Khemani, A.G.P. for Respondent No.2-State
Mr.B.G.Vaidya for Respondent No.3.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 8,2007.

P.C.:

1. Heard Shri Godbole for the Petitioner. By this Petition under Article 227 of Constitution of India, the Petitioner has challenged the Judgment and Order dated 12th September 2006 passed by the Revisional Authority i.e. the Minister of State for Cooperation, Marketing & Textile, Government of Maharashtra, Mantralaya, Mumbai-400032.

2. The Petitioner is a developer of immoveable property. The Petitioner constructed a building. A proposal for registration of a co-operative society of the flat purchasers was submitted before the Deputy Registrar of the Cooperative Societies as provided under section 9 of the Maharashtra Cooperative Societies Act,1960 (hereinafter referred to as the said Act of 1960). The proposal was submitted on the ground that the Petitioner-builder did not take steps for formation of the cooperative society and he has not complied with his obligation under section 10 of the Maharashtra Ownership Flats

(Regulation of the Promotion of construction, sale, management and transfer) Act, 1963. By order dated 24th May 2005, the proposal for registration of the society submitted by the third Respondent in his capacity of a Chief Promoter was rejected. In an Appeal preferred by the third Respondent, the Divisional Joint Registrar of Cooperative Societies interfered and directed the registration of the society. The order of Appellate Authority is confirmed in the Revision Application.

3. The learned Counsel for the Petitioner submitted that as per the sanctioned plan, the construction is yet to be completed. He submitted that 10% of the constructed area which is required to be transferred to the Municipal Corporation has not been transferred. He submitted that the Revisional Authority has relied upon the decision of this Court reported in 2002 C.T.J. page 248 holding that the Revision application at the instance of the builder was not maintainable. He pointed out that the Revisional Authority on the basis of aforesaid decision has held that the Petitioner has no authority to challenge the registration of the society. He submitted that the view taken by this Court needs reconsideration. He also submitted that in view of the mandate of section 10 of the said Act of 1963, the Petitioner or the promoter was the only person who could have formed the cooperative society. He submitted that in view of the fact that under section 10 of the said Act of 1963, the promoter-builder has to join in formation of the cooperative

society, the promoter can always challenge the order granting registration in respect of the cooperative society of the flat purchasers.

5. I have considered the submissions. Perusal of the impugned order passed by the Revisional Authority shows that the Revisional Authority has considered the merits of the case. The Revisional Authority has noted that the Petitioner constructed the building in the year 1995-96 and failed to submit a proposal for registration till the year 2005. The Revisional Authority has noted the obligation of the Petitioner to submit a proposal for registration of the society as required by section 10 of the said Act of 1963. The Revisional Authority also noted that on account of non cooperation of the Petitioner in the matter of registration of the cooperative society, a proposal was submitted by the flat purchasers which has been granted under the orders of Appellate Authority. Both the Appellate Authority and the Revisional Authorities have held that the requirement of handing over 10% area to the Municipal Corporation has nothing to do with the registration of the society.

6. Section 10 of the said Act of 1963 reads thus :

"10. Promoter to take steps for formation of co-operative society or company.

(1) As soon as a minimum number of persons required to

form a Co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a Co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be, of a company. Nothing in this section shall affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act.

(2) If any property consisting of building or buildings is constructed or to be constructed [and the promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act,1970, by executing and registering a Declaration as provided by that Act] then the promoter shall inform the Registrar as defined in the Maharashtra Cooperative Societies Act,1960, accordingly; and in such case, it shall not be lawful to form any co-operative society or company."

It is also necessary to refer rule 8 of the Rules framed under the said Act of 1963 which reads thus :

"8. Period for submission of application for registration

of co-operative society or company of Flat purchasers.

. Where a co-operative society or a company of person taking the flats is to be constituted, the promoter shall submit an application to the Registrar for registration of the co-operative society or the company as the case may be, within four months from the date on which the minimum number of persons required to form such organisation have taken flats.

. [Where the apartment takers propose to submit the apartments to the provisions of the Maharashtra Apartment Ownership Act,1970, by executing Declarations and Deeds of Apartments as required by that Act, the promoter shall inform the Registrar as defined in the Maharastra Co-operative Societies Act,1960, as soon as possible after the date on which all the apartment owners (being not less than five) have executed such Declaration and Deeds of Apartment.]

Section 10 discloses that the it was the obligation of the Petitioner to submit an application to the Registrar for registration of the cooperative society within a period of four months from the date on which the minimum number of persons required to form the society had taken the flats. It is borne out from the record that the Petitioner did not take

steps within the time prescribed by the said Rule. As the Petitioner failed to perform its obligation as stipulated by the law, the flat purchasers applied for registration of the society.

7. While deciding the Revision Application, it is no doubt true that the Revisional Authority has observed that the Petitioner has no locus standi to challenge the registration. Nevertheless, the Revisional Authority has considered the merits of the case. This is a case where at least 14 flat purchasers were placed in possession of their respective flats in the year 1995-96 and for a period of 9 to 10 years, the Petitioner failed to take any steps to comply with its statutory obligations under the said Act of 1963. There is no illegality in the registration of the society.

8. The learned Counsel for the Petitioner submitted that the flat purchasers occupying the flats in the building have not paid dues payable in respect of the flats. In my view, this has nothing to do with the registration of the society and is no ground to upset the order granting registration of the society.

9. No case is made out for interference. The Petition is rejected.

JUDGE